The Illinois Commerce Commission is the administrative agency of the State of Illinois charged by the laws of said State (Ill. Rev. Stat., 1949, Ch. 111⅔, pars. 1-110.9) with the regulation of public utilities in that state, including those selling natural gas, and, as a matter of law (*In re Englehard & Sons Company,* 231 U. S. 646, 650-652; *New York City* v. *New York Telephone Company,* 261 U. S. 312, 315-316; *Smith* v. *Illinois Bell Telephone Company,* 270 U. S. 587, 592), represents all Illinois consumers affected by the order in the case (some 60,000 consumers in 37 communities).

Opinion Below.

The opinion of the United States Court of Appeals for the Fifth Circuit (R. 131)* is reported at 181 F (2d) 833.

Jurisdiction.

The judgment and decree of the Court of Appeals was entered on July 15, 1950 (R. 131). The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1254 (1).

Question Presented.

Did the Court of Appeals conform to the mandate of this court in *Federal Power Commission* v. *Interstate Natural Gas Company,* 336 U. S. 577, when that court paid to respondent, Mississippi River Fuel Corporation, an interstate natural gas pipe line company, instead of to the ultimate consumers of the gas, the major portion of the fund impounded as the result of an unsuccessful attack on an FPC order reducing rates of Mississippi's suppliers?

---

* Record references are to the printed record.

Statutes Involved.

Sec. 1(b), Natural Gas Act [52 Stat. 821 (1938); 15 U. S. C. § 717(b) (1946)]:

> "The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

The provisions of the Illinois statutes hereinafter discussed are printed in Appendix A.

Statement of Facts.

On April 27, 1943, the Federal Power Commission ordered a reduction in the rates of Interstate Natural Gas Company (Interstate). Pending review, the court below stayed that order and required Interstate to deposit monthly the excess of the old over the new rates in the registry of the court. The stay order was in effect from June 1943 to October 1947. After affirmance of the Commission order (156 F. (2d) 949 and 331 U. S. 682) the court below first directed that the impounded funds be distributed to Interstate's direct customers (166 F. (2d) 796). Three interstate pipeline companies, including Mississippi River Fuel Corporation (Mississippi), were Interstate's only direct customers. Mississippi and Interstate during the time in which the fund was accumulated were affiliated in that Standard Oil Company of New Jersey owned 54% of the stock in Interstate and 22.5% of the stock in Mississippi. Mr. Frank H. Lerch, Jr., was president of both

companies. (See Record, pp. 250-254 in *Interstate Natural Gas Company* v. *Federal Power Commission,* No. 733, October Term, 1946.)

On certiorari to review that order this Court reversed and remanded the case to the court below with directions. *Federal Power Commission* v. *Interstate Natural Gas Company,* 336 U. S. 577 (1949).

After the mandate came down, Mississippi submitted to the Court of Appeals a plan for distribution of $1,484,582.53 which was a portion of the impounded fund allocable to sales from Interstate to Mississippi (R. 1). Of this sum Mississippi claimed $244,103.70 on the ground that it had already reduced its rates to its public utility customers by a like amount (R. 8).[1] It admitted that an additional $300,898.66 should be paid to its public utility customers (R. 16),[2] but asserted that it should be allowed to keep the remaining $939,580.17 because it computed that amount as the difference between the old and new Interstate rates as

---

[1] Mississippi had not reduced its rates specifically because of the Interstate rate reduction. In 1945 the Federal Power Commission ordered Mississippi to reduce its rates to public utility customers, effective January 20, 1946 (4 F. P. C. 340). The order further directed that in addition to the reduction then ordered, Mississippi should reduce its rates whenever the Interstate order, then in litigation, became final. It was estimated that the Interstate order would reduce Interstate's rates to Mississippi by $301,329 (4 F.P.C. 340, 363). This Mississippi rate order was appealed but not stayed, and the Court of Appeals for the District of Columbia reversed because the findings in the order were insufficient. *Mississippi River Fuel Corporation* v. *Federal Power Commission,* 163 F. (2d) 433. To settle the case and Mississippi's claim that its expenses had risen to the point that it needed a rate increase, the Federal Power Commission and Mississippi, after the case was remanded by the Court of Appeals, agreed that Mississippi's rates from January 20, 1946, to October 1, 1947, the month in which the Supreme Court upheld the Interstate order, should be raised somewhat but that Mississippi should pass on the part of the Interstate reduction applicable to sales to public utility companies. The demand charge was fixed at $1.00 per month per mcf for the period January 20, 1946, to October 1, 1947, and at $1.12 thereafter (R. 112-115).

[2] These public utility customers in turn have renounced all claims to this sum, which is to be passed on to the ultimate consumers who are their customers.

applied to the quantities of gas sold by Mississippi to its direct customers. All these amounts were computed simply by applying the difference between the old and new Interstate rates to the volumes of gas sold by Mississippi to the two classes of its customers, viz., public utility companies for resale to ultimate consumers and ultimate consumers themselves (R. 8-9).

The Federal Power Commission had found in its 1945 Mississippi rate order that a fair rate of return for Mississippi was six per cent and that it was earning more than this rate on sales regulated by that commission as well as on sales not so regulated.[3] 4 F. P. C. 340. The rates for interruptible service to ultimate consumers purchasing directly from Mississippi ranged from 54 to 68% of the rates for firm service to Mississippi's public utility customers, and the rates for firm service to its consumer customers were only about 80% of the rates for firm service to its public utility customers.[4]

On March 2, 1950, an order to show cause why the fund should not be distributed according to the plan proposed by Mississippi was directed against all interested parties,

---

[3] By the terms of Section 1(b) of the Natural Gas Act, the Federal Power Commission can regulate only sales to companies which in turn will resell the gas. Mississippi sells gas to respondent companies and other companies which consume the gas themselves rather than reselling. Such sales have been held to be beyond the jurisdiction of the Federal Power Commission. See *Panhandle Eastern Pipe Line Company* v. *Federal Power Commission*, 324 U. S. 635, 646-647 (1945).

[4] These computations were made from the figures in the excerpt from Mississippi's prospectus, which shows both the volumes of gas sold to and the revenues derived from the various classes of customers from 1943 through 1948 (R. 89). A table of the average rates per mcf, 1943-1946, follows:

	1943	1944	1945	1946
Utility Firm	25.8¢	26.0¢	26.2¢	20.7¢
Industrial Firm	21.4¢	21.6¢	21.5¢	21.2¢
Interruptible	15.2¢	14.7¢	14.2¢	14.0¢

Interruptible service to utilities was of negligible quantity. The differences in rates are slightly overstated because gas was delivered to the industrial customers at a pressure which was only 99% as high as the pressure at which was delivered to the public utilities.

including, for the first time, the consumer customers of Mississippi (R. 40). Certain of these customers disclaimed any share or failed to answer (R. 24). Those who are respondents to this petition filed claims totalling $467,618.79 (R. 44, 46, 52, 54, 59, 62, 69, 78, 80, 81, 83), computed on the basis above described.

The Federal Power Commission and the Missouri Public Service Commission denied any jurisdiction over Mississippi's sales to its consumer customers (R. 14, 26). The Illinois Commerce Commission in the meantime[5] had cited various interstate pipeline companies, including Mississippi, to show cause why their direct sales to industrial consumers in Illinois did not bring them under its jurisdiction (R. 5[illegible], although the Commission had held early in 1949 that Mississippi's sales were not subject to its jurisdiction (R. 28). This Commission contended that the fund, with the exception of whatever amount Mississippi had passed on to its customers through rate reductions, should be paid to the ultimate consumers, either those buying directly from Mississippi or the customers of Mississippi's public utility customers, but in any case should not be paid to Mississippi.

The Court of Appeals approved the Mississippi plan in its entirety and ordered that the entire amount which Mississippi had allocated to sales to contract customers should be paid to Mississippi (R. 140, 143).

Specifications of Error.

The Court of Appeals erred:

1. In holding that under this Court's opinion in *Federal Power Commission* v. *Interstate Natural Gas Company,* 336 U. S. 577, Mississippi was entitled to any portion of the fund except that which was equal to the amount by

[5] On February 8, 1950.

which Mississippi had reduced its rates to its public utility customers;

2. In apportioning the fund according to the volumes of gas which the various classes of Mississippi's customers had consumed;

3. In deciding the rights of the industrial customers under Illinois law on the sole authority of an order of the Illinois Commerce Commission dated January 14, 1949, without attempting an interpretation of the Public Utilities Act of Illinois, which no Illinois court had construed on this point.

REASONS FOR GRANTING THE WRIT.

I. The decree of the Court of Appeals fails to carry out the mandate of this court and should be corrected.

The court below, in holding that as a matter of law Mississippi was entitled to the $939,580.17, misconstrued this Court's opinion in *Federal Power Commission* v. *Interstate Natural Gas Company,* 336 U. S. 577 (1949), and failed to conform to its mandate.

1. This Court made it clear that the immediate purchasers from Interstate could share in the fund only if their own rates had been so low that they were not earning a reasonable return, or if they had passed the rate reductions on to their customers.[6] That Mississippi's rates were

---

[6] "The pipe-line companies in their petitions for intervention make no claim that their rates have been so low that they are entitled to these refunds as a matter of law * * * Moreover, if the pipeline companies passed on to their customers the rate reductions from the date of the Commission's order (as Mississippi alleges it did), they would be entitled to a return of the payments they made into the fund. They would then have done all that was in their power to effectuate the policy of the Act in this regard. But apart from these exceptions, it is the duty of the court to look beyond those companies for the rightful claimants of the fund." 336 U. S. 577, 582.

Somewhat the same opinion was also expressed in the following language:

"Whether the three purchasers or the intervening distributors are entitled to any part of the reduction depends upon the ascertainable condition of the three purchasers from Interstate and the intermediate purchases from them." 336 U. S. 577, 586-587.

high enough—in fact, too high from 1943 to 1946—is demonstrated by the Federal Power Commission's order of November 9, 1945, finding that Mississippi was earning more than a fair rate of return on all its business and ordering it to reduce its rates to its public utility customers and further to reduce its rates whenever the Interstate order should be upheld in court (4 F. P. C. 340),[7] nor is it contended that any of the $939,580.17 was passed on to Mississippi's customers.

Only in the opinion of Mr. Justice Jackson is there any language to indicate that the members of the Court contemplated giving a part of the fund to the intermediate pipe-line companies because some of the ultimate consumers were their contract customers. The only statement made by the Court which touches on the sales to these consumers[8] followed a sentence stating expressly that it was considering distribution to other than the pipe-line companies.[9] Yet the Court below based its decision on the fact that Mississippi had sold large quantities of gas to contract customers who had not sought reduced contract rates during the period in question.[10]

The Court of Appeals adopted a premise almost diametrically opposed to that of this Court. Despite the language of this Court limiting the right of the intermediate pipeline companies to the fund, the Court of Appeals started from the premise that they had a *prima facie* right to it,

---

[7] This order was set aside only because its findings were insufficient, not because the Commission had been wrong on the merits. *Mississippi River Fuel Corporation* v. *Federal Power Commission*, *supra*, note 1.

[8] "We likewise do not know whether the reductions would have reached the industrials either by terms of the contracts or by virtue of the assertion of regulatory authority" 336 U. S. 577, 583.

[9] "The problem is somewhat more complicated if distribution of the fund is to be made to claimants other than the pipe-line companies." *Ibid.*

[10] *Interstate Natural Gas Company* v. *Federal Power Commission*, 181 F. (2d) 833, 835 (1950).

and that any other claimants had the burden of showing superior claims to it. *Interstate Natural Gas Company* v. *Federal Power Commission*, 181 F. (2d) 833, 836-837 (1950). The Court then proceeded on the theory that superior claims could be shown only by demonstrating that the claimant would have received the fund had no stay order been entered. Since it was almost impossible to show with any certainty what would have happened had no stay order been entered, the position of the court resulted in making it virtually impossible for any claimant, other than Mississippi, to establish a right to the fund.

2. The opinions, save that of Mr. Justice Jackson, indicate that the fund should be distributed according to equitable principles,[11] because the Court of Appeals has jurisdiction to distribute the fund only because it is the equity court which caused accumulation of the fund.[12]

The Court further suggested that the fund should be distributed to those persons who would have obtained it had there been no stay order entered. This conclusion, however, was apparently based on the assumption that such distribution would be in accordance with equitable principles. If, in fact, such distribution would not do equity, the assumption would be unwarranted and some equitable plan of distribution would have to be developed. To determine whether the distribution satisfies equitable principles all of the circumstances and the claims of the various individuals and groups involved must be considered. We submit that

---

[11] "It (the Court of Appeals) assumes the duty to make disposition of the fund in accord with equitable principles" p. 582.
"Reasons of equity produced the fund; equitable considerations must govern its distribution" p. 586.
"Nothing short of this will accord with the congressional purpose or with equitable principles by which the court must be governed in administering the fund" p. 598.

[12] The Court relied on *United States* v. *Morgan*, 307 U. S. 183 (1939); *Inland Steel Company* v. *United States*, 306 U. S. 153 (1939); and *Atlantic Coast Line Railroad Co.* v. *Florida*, 295 U. S. 301 (1935).

any plan that allows Interstate's affiliate, which itself during most of the period when the impounded fund was accumulated was earning excessive profits, to keep the major portion of this fund is not in accord with equitable principles. In these circumstances to give Mississippi any share in the fund would result in a windfall to Mississippi, unjustly enrich it and its parent company, and truly make the Federal Power Commission's rate order of April, 1943, an exercise in futility.[13]

A more equitable plan has been used in other cases where it was necessary to distribute funds impounded during gas rate cases. In *Natural Gas Pipeline Company* v. *Federal Power Commission*, 131 F. (2d) 137 (CCA 7, 1942) the Court ruled that industrial consumers and consumers using gas for heating purposes should not receive any of an impounded fund, because they had paid much lower prices for their gas than had the other users—chiefly domestic users for cooking purposes—and that the latter should receive the fund. *Central States Electric Company* v. *City of Muscatine*, 324 U. S. 138 (1945) did not disapprove this part of the court's plan but only held that when a purchaser for resale could show some equitable consideration entitling it to a portion of the fund, that portion should be awarded to it.[14]

A slight modification in this plan was made by the United States Court of Appeals for the Eighth Circuit during litigation over the rates of Panhandle Eastern Pipe Line Company when the court adopted the recommendation of a spe-

---

[13] Such a result would be ironic in view of the fact that this Court has many times declared that the purpose of the Natural Gas Act was to protect the ultimate consumers. See *Federal Power Commission* v. *Hope Natural Gas Company*, 320 U. S. 591, 610, 612 (1944); *Panhandle Eastern Pipe Line Company* v. *Public Service Commission*, 332 U. S. 507, 520 (1947); *Federal Power Commission* v. *Interstate Natural Gas Company, supra*, at p. 581.

[14] See Mr. Justice Frankfurter's reference in his opinion in the *Interstate* case, 336 U. S. 577,, 586.

cial master in chancery that the A. P. Green Brick Company, an industrial user, be allowed to participate in an impounded fund because it had paid rates which gave the utility a substantial return on its investment.[15] *The court ruled similarly on the distribution of another portion of the fund in the area of Battle Creek, Michigan.*

Apart from these exceptions, it has not been doubted by the states which have had to make distributions of impounded funds that the distribution to domestic and smaller commercial consumers to the exclusion of low-rate-paying industrial consumers was the most equitable way to distribute such funds.[16] *The cases above mentioned, of course, involved only one interstate pipe-line company, intermediate local public utility companies and the ultimate consumers who were customers of those local public utility companies. The equities, however, are not changed by the introduction of another intermediate company (an interstate pipe-line company) except that now, instead of examining the earnings and condition of one intermediate company to determine whether or not there were equitable considerations which would entitle it to the fund, the court must examine the earnings and condition of two intermediate companies. In the instant case the intermediate com-*

---

[15] C. A. 8th, No. 12,466, order filed on August 30, 1947. The master's report was filed on July 17, 1947.

[16] *Proceedings at 61st Annual Convention of the National Association of Railroad and Utilities Commissioners* (1949), address by John Randolph, Member of Missouri Public Service Commission, 483, 489. See also statement on page 15 of the Brief for the Federal Power Commission Submitted to the Court below in the instant case (R. ....). The reason there given was that the industrial consumers would not have obtained any reduction in rates from the reduction in the cost of gas to the local utility. Generally the failure to obtain such reduction has been due to the fact that the rates for such utilities had covered little more than the incremental cost of giving such service rather than a proportionate share of fixed and variable costs. These rates have been held down to this level by the prices of competitive fuels. The state commissions, when they have had refunds or reductions to pass on to consumers, naturally enough have refused shares to customers already benefiting by such rates.

issues at the level of legal interpretation have specifically disclaimed any right to the fund. The customers of the other intermediate company, Mississippi, were found to be equally free by the Federal Power Commission. 1 F. P. C. 340.

Under such a rule those ultimate consumers who purchased directly from Mississippi at rates covering their proportionate shares of the costs would be entitled to recover part of the fund, unless they were excluded on other grounds. If for any other reason they were excluded, their shares should go to the higher rate paying utility customers to be passed on to ultimate consumers. Those ultimate consumers purchasing directly from Mississippi at rates not covering their proportionate costs would not be entitled to any part of the fund, and, again, the part now attributed to sales to them would be awarded to the higher rate paying utility customers to be passed on to ultimate consumers.

8. The Court of Appeals made a further error in its summary determination that those of Mississippi's direct customers who are located in Illinois could not have secured rate relief under the Illinois Public Utilities Act. This determination was based on an order of the Illinois Commerce Commission dated January 14, 1949 (77 P. U. R., N. S., 12), in which this Commission decided on the basis of Mississippi's representations as to its operations in Illinois that the Commission had no jurisdiction over Mississippi's sales to its direct customers. The court below adopted this determination apparently on the theory that the order indicated how this Commission would have acted had no stay order been entered in the Interstate case.

That order was entered before the problem of distributing this fund arose, and as a consequence, none of the contract customers opposed Mississippi's contention that the Illinois Commission had no jurisdiction over its sales.

Supp. even urged the same contention. Had the stay order not been entered and had there been some hope of immediate reduction in rates, their position might have been affected and the Commission would have had the benefit of argument from both sides. Furthermore, since the Commission's interpretation could not have been final, the contract consumers might have appealed an adverse Commission order to the Illinois courts in order to obtain an authoritative construction.[17]

The Illinois courts have never interpreted the Illinois Public Utilities Act on this point. In such a situation the court below should have examined the state law itself to determine the correct interpretation of the Illinois Public Utilities Act. That statute gives broad enough powers to the Illinois Commerce Commission to raise a substantial likelihood that it has jurisdiction in such cases.[18] *Significantly the Illinois Commerce Commission has thought the question worthy enough of further consideration to cite three pipe-line companies, including Mississippi, to show cause why their sales to contract customers should not be fully regulated by the Commission.*[19] *That proceeding is presently pending before this Commission with hearings not yet completed. That fact was brought to the attention of the court below. To conform to this Court's mandate in the Interstate case, the Court of Appeals should have*

[17] Ill. Stat. 1949, Ch. 111-2/3, Pars. 72, 73.

[18] Section 8 of the Public Utilities Act (Ill. Rev. Stat. 1949, Ch. 111-2/3, par. 81) gives the Commission general supervision over all public utilities. Section 10 (Ill. Rev. Stat. 1949, Ch. 111-2/3, par. 10) includes in the definition of a public utility a company which owns property for conveyance of oil or gas by pipe line. Sec. 41 (Ill. Rev. Stat. 1949, Ch. 111-2/3, par. 41) gives the Commission power to fix rates of public utilities. Sec. 72 (Ill. Rev. Stat. 1949, Ch. 111-2/3, para. 76) gives the Commission power to order reparations for overcharges provided complaint is made to the Commission within one year of the overcharge.

[19] *Illinois Commerce Commission v. Mississippi River Fuel Corporation*, Ill. C. C. Docket No. 38143.

made its own determination as to the law of Illinois in this regard.

4. The decision of the Court of Appeals once again puts a premium on the litigation of rate orders. If, as here, the primary pipe-line company has an affiliated vendee pipe-line company which in turn sells the gas, litigation and impounding with ultimate distribution to the affiliate will be almost as profitable as the primary company's winning the rate litigation itself. The company has everything to gain from litigation and nothing to lose. No company could refuse to litigate a rate order in such a situation.

II. The question involved is an important one in the Administration of the Natural Gas Act.

It is submitted that it is essential that the question here involved should be settled and the rights of ultimate consumers of natural gas in impounded funds be determined. Inter-connection between primary gas pipe lines and secondary gas pipe lines are becoming more numerous; indeed, the creation of secondary gas pipe-line companies affiliated with the primary gas pipe-line companies will be greatly encouraged by the decree of the Court of Appeals. Rate cases under the Natural Gas Act will continue to involve large sums of money and many parties. By granting the writ of certiorari on the prior petition this Court recognized the importance of settling these problems. This petition rests on the same foundation as the first. Cf. *Baltimore & Ohio Railroad Co.* v. *United States*, 279 U. S. 781 (1929); *Arkadelphia Milling Company* v. *St. Louis-Southwestern Railway Co.*, 249 U. S. 134 (1918).

CONCLUSION.

The Court of Appeals for the Fifth Circuit failed to carry out this Court's mandate in *Federal Power Commission* v. *Interstate Natural Gas Company,* 336 U. S. 577. By assuming that Mississippi has a *prima facie* right to the fund, the Court below entered exactly the same order as it did before, except insofar as Mississippi consented otherwise, despite the fact that this Court set aside the previous order. For the reasons stated above the writ of certiorari should be granted to give effect to the prior mandate of this Court.

Respectfully submitted,

IVAN ELLIOTT,
Attorney General for the State of Illinois,
160 N. LaSalle Street Chicago 1, Illinois.
Attorney for Illinois Commerce Commission.

Of Counsel:

WILLIAM R. MING, JR.,
Special Assistant Attorney General
MILTON MALLIN,
Assistant Attorney General
WILBUR S. LEGG.

APPENDIX A.

Ill. Rev. State. 1949, Ch. 111⅔, par. 8.

"The Commission shall have general supervision of all public utilities, except as otherwise provided in this Act, shall inquire into the management of the business thereof and shall keep itself informed as to the manner and method in which the business is conducted. It shall examine such public utilities and keep informed as to their general condition, their franchises, capitalization, rates and other charges, and the manner in which their plants, equipment and other property owned, leased, controlled or operated are managed, conducted and operated, not only with respect to the adequacy, security and accommodation afforded by their service but also with respect to their compliance with the provisions of this Act and any other law, with the orders of the Commission and with the charter and franchise requirements."

Ill. Rev. Stat. 1949, Ch. 111⅔, par. 10.

"The term 'public utility,' when used in this Act, means and includes every corporation, company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees, or receivers appointed by any court whatsoever . . . that now or hereafter:

"(a) May own, control, operate, or manage, within the State, directly or indirectly, for public use, any plant, equipment or property used or to be used . . . for the conveyance of oil or gas by pipe line; . . ."

Ill. Rev. Stat. 1949, Ch. 111⅔, par. 41.

"Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that the rates or other charges, or classifications, or any of them, demanded, observed, charged or collected by any public utility for any service or product or commodity, or in connection therewith, . . . are unjust, unreasonable, discriminatory or preferential, or in any wise in violation of any provisions of law, or that such rates

or other charges or classifications are insufficient, the Commission shall determine the just, reasonable or sufficient rates or other charges, classifications, rules, regulations, contracts or practices to be thereafter observed and in force, and shall fix the same by order as hereinafter provided.

"The Commission shall have power, upon a hearing had upon its own motion or upon complaint, to investigate a single rate or other charge, classification, rule, regulation, contract or practice, or any number thereof, or the entire schedule or schedules of rates or other charges, classifications, rules, regulations, contracts and practices, or any thereof of any public utility, and to establish new rates or other charges, classifications, rules, regulations, contracts or practices or schedule or schedules, in lieu thereof. . . ."

Ill. Rev. Stat. 1949, Ch. 111⅔, par. 76.

"When complaint has been made to the Commission concerning any rate or other charge of any public utility and the Commission has found, after a hearing, that the public utility has charged an excessive or unjustly discriminatory amount for its product, commodity or service, the Commission may order that the public utility make due reparation to the complainant therefor, with interest at the legal rate from the date of payment of such excessive or unjustly discriminatory amount.

• • •

"All complaints for the recovery of damages shall be filed with the Commission within one year from the time the produce, commodity or service as to which complaint is made was furnished or performed, . . ."

Office - Supreme Court, U
FILED
NOV 13 1950

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 389.

ILLINOIS COMMERCE COMMISSION,
Petitioner.

vs.

MISSISSIPPI RIVER FUEL CORPORATION, ALTON BOX BOARD COMPANY, BLACKMER & POST PIPE COMPANY, GENERAL STEEL CASTINGS CORPORATION, GRANITE CITY STEEL COMPANY, LACLEDE-CHRISTY CLAY PRODUCTS COMPANY, LACLEDE STEEL COMPANY, OLIN INDUSTRIES, INC., OWENS-ILLINOIS GLASS COMPANY, SCULLIN STEEL COMPANY, INTERSTATE NATURAL GAS COMPANY and FEDERAL POWER COMMISSION,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR RESPONDENT, MISSISSIPPI RIVER FUEL CORPORATION, IN OPPOSITION.

WILLIAM A. DOUGHERTY,
JAMES LAWRENCE WHITE,
HENRY F. LIPPITT, II,
30 Rockefeller Plaza,
New York 20, N. Y.
Attorneys for Respondent,
Mississippi River Fuel Corporation.

November 13, 1950.

INDEX

	PAGE
OPINION BELOW	1
JURISDICTION	1
QUESTION PRESENTED	2
STATUTE INVOLVED	2
STATEMENT	2
ARGUMENT	5
I. The decision below is clearly correct and conforms to this Court's mandate	7
II. There is no question involved in this petition relating to a question of federal law and the Natural Gas Act which has not already been determined by this Court	13
CONCLUSION	15

CITATIONS

Cases

	PAGE
Atlantic Coast Line Railroad Company v. *Florida*, 295 U. S. 301	12
Central States Electric Company v. *City of Muscatine, et al.*, 324 U. S. 138	14
Federal Power Commission v. *Hope Natural Gas Company*, 320 U. S. 591	13
Federal Power Commission v. *Interstate Natural Gas Company*, 336 U. S. 577	5, 6, 7, 8, 9, 10, 12, 13
Illinois Commerce Commission v. *Mississippi River Fuel Corporation*, 77 PUR NS 12 (Ill. Com. Comn., 1949)	6, 12
Re Mississippi River Fuel Corporation, 4 F. P. C. 340	9
Panhandle Eastern Pipe Line Company v. *Public Service Commission of Indiana*, 332 U. S. 507	5, 9

Statutes

Illinois Rev. Stat. 1949, Ch. 111⅔, § 76	8
Natural Gas Act, § 1 (b) (15 U. S. C. § 717 (b))	2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 360.

ILLINOIS COMMERCE COMMISSION,

Petitioner,

vs.

MISSISSIPPI RIVER FUEL CORPORATION, ALTON BOX BOARD COMPANY, BLACKMER & POST PIPE COMPANY, GENERAL STEEL CASTINGS CORPORATION, GRANITE CITY STEEL COMPANY, LACLEDE-CHRISTY CLAY PRODUCTS COMPANY, LACLEDE STEEL COMPANY, OLIN INDUSTRIES, INC., OWENS-ILLINOIS GLASS COMPANY, SCULLIN STEEL COMPANY, INTERSTATE NATURAL GAS COMPANY and FEDERAL POWER COMMISSION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR RESPONDENT, MISSISSIPPI RIVER FUEL CORPORATION, IN OPPOSITION.

Opinion Below.

The opinion of the United States Court of Appeals for the Fifth Circuit (R. 131) is reported at 181 F. 2d. 833.

Jurisdiction.

The opinion and judgment of the Court of Appeals was filed May 9, 1950 (R. 131). The formal decree adopted in said judgment was entered July 15, 1950 (R. 141). Petitioner seeks to invoke this Court's jurisdiction under 28 U. S. C., Section 1254(1).

Question Presented.

Where a natural-gas company sells gas for resale and also for consumption, may it be awarded overcharges paid by it to a supplying natural-gas company when the amount of such overcharges concededly relates to natural gas purchased for direct sale for industrial consumptive use if no local law or regulatory process inhibits such distribution and the privately negotiated arms length contract of sale to the industrial consumer does not provide for a reduction in price?

Statute Involved.

Section 1(b) of the Natural Gas Act (52 Stat. 821, (1938), 15 U. S. C., Sec. 717(b)):

> "The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

Statement.

The petition in this case seeks a review of the same Court order as sought in the petitions in Nos. 356 and 357. Petitioners in No. 356 are four industrial corporations in Illinois. Petitioners in No. 357 are three industrial corporations in Missouri and two in Illinois. Illinois Commerce

Commission, petitioner herein, appears in a representative capacity on behalf of all Illinois consumers, including petitioners in Nos. 356 and 357 which are located in Illinois. Except for certain unusual claims made by the individual petitioners, the issues in all three cases are essentially similar. Out of a total of fifty-five direct industrial customers only eleven opposed the distribution ordered by the Court below (R. 135-136) and only nine are here complaining. These few customers seek a windfall for themselves without any justification in law or equity.

This case involves that part of the order of the Court below awarding to the respondent, Mississippi River Fuel Corporation ("Mississippi") that portion of excess charges paid by Mississippi for gas purchased and sold to nine industrial customers directly for consumption. While the stay order was in effect, Mississippi had paid to Interstate Natural Gas Company, Incorporated ("Interstate") for gas purchased a total of $1,484,582.53 in excess of the rates prescribed by the Federal Power Commission. Of this sum, Mississippi had previously passed on to its utility distributing customers $244,103.70 under a settlement of a rate case with the Federal Power Commission (R. 112-119). Under the plan submitted to the Court of Appeals and agreed to by the Federal Power Commission, the Arkansas Public Service Commission and the Missouri Public Service Commission (R. 20-27, 143) (all regulatory bodies involved except petitioner) an additional $300,898.66 was passed on to utility distribution companies or their ultimate consumers of gas as local commissions would direct. These two sums totalling $545,002.36 were the total excess charges paid by Mississippi during the whole impoundment period for the purchase of gas sold by Mississippi *for resale* (R. 92).

Petitioner asserts that the remaining $939,580.17 of excess charges attributable to direct sales for consumptive use only should be awarded to the direct industrial consumptive users or, if not to them, then to the remote domestic users who never paid for such gas and never consumed it. The nine industrial consumers, petitioners in Nos. 356 and 357, claim $467,618.79 (petition in No. 356, p. 4).

The Illinois Commission apparently assumes to act on behalf of the Illinois direct industrial claimants (petition, p. 2). This, petitioner assumes to do despite an order of the Illinois Commerce Commission dated January 14, 1949 (R. 28-35) in which it was expressly held that the Illinois Commission had no jurisdiction over Mississippi's sales for direct consumptive use in the State of Illinois because the Illinois Public Utility Law did not confer such jurisdiction upon it. Subsequent to that time, the Illinois Commission issued a citation against Mississippi to show cause why its sales to direct consumptive users should not be regulated by the Illinois Commission (petition, p. 13). No action has been taken upon this citation proceeding nor has the previous determination of no jurisdiction been vacated or altered in any manner, nor has the local statutory law been changed in this regard. Not only is the Illinois Commission here collaterally impeaching its own determination of no jurisdiction, but it is before this Court in a representative capacity which, under its standing order and law, is beyond its jurisdiction. Therefore, petitioner is asking this Court to take a position in respect of its fundamental jurisdiction previous to the time when it itself asserts it. It would appear, therefore, that the Illinois Commerce Commission is without authority so to appear.

Fundamentally, also, as pointed out by the Court below, the Illinois Commerce Commission is not in position (even

if it did possess rate regulatory jurisdiction over these direct consumptive sales) to award any reparations or make any type of retroactive rate order against Mississippi (R. 139-140). Under Illinois law, a reparation claim must be filed within one year from the date of furnishing the service (petition, p. 17).

Argument.

The substance of petitioner's contentions is that the Court below failed to carry out the mandate of this Court in *Federal Power Commission* v. *Interstate Natural Gas Company,* 336 U. S. 577 and that Mississippi could share in the impounded funds only (1) if it had been earning less than a reasonable return upon the direct industrial consumptive sales (which are outside of the rate regulatory provisions of the Natural Gas Act), or (2) if it had passed the rate reduction on to its customers.

Mississippi, on the other hand, contends that inasmuch as its direct industrial rates are not subject to any regulation (either state or federal) and are the result of "private and arms length negotiations under the compelling pressures of other competing fuels" (R. 138-139), it should not be required to make any refunds to these few large industrial customers where there is no contract or regulatory requirement that it do so.

At the outset, it must be noted that Mississippi has a dual role so far as its sales of gas are concerned:

> (1) As a wholesaler or seller of gas for resale in interstate commerce: these sales admittedly are subject to the rate regulatory jurisdiction of the Federal Power Commission; and
>
> (2) As a direct seller of a commodity: such sales have been held by this Court to be governed by local law if it exists (*Panhandle Eastern Pipe Line Com-*

pany vs. *Public Service Commission of Indiana,* 332 U. S. 507).

The Illinois Commerce Commission determined by order dated January 14, 1949 that under the regulatory law of that state Mississippi was not engaged in the activities of a "public utility", but rather sells gas directly for consumption under private contracts; and these activities "do not represent a public use within the meaning of Section 10 of 'An Act concerning public utilities'" (*Illinois Commerce Commission* v. *Mississippi River Fuel Corporation,* 77 PUR NS 12 (Ill. Com. Comn., 1949)) (R. 34-35). The Illinois Commerce Commission, accordingly, found that it did not have jurisdiction over the sales directly for consumption. It is this dual role which this Court previously recognized when this matter was before it, but which apparently petitioner fails to comprehend. Evidence of the fact that this Court previously recognized the dual role and spoke in the main only of the sales subject to Federal Power Commission jurisdiction is found in such pronouncements of the Court as:

> "* * * The claims of these pipeline companies to the fund are therefore determinable solely with reference to federal law, since the Natural Gas Act * * * is designed to regulate the segment of the industry occupied by such distributors. * * * We may not therefore sustain the action of the Court of Appeals unless it is clear as a matter of federal law that the pipe line companies are entitled to the fund" (336 U. S. at 580-581).

In dealing with industrial users, this Court stated:

> "* * * We likewise do not know whether the reductions would have reached the industrial users either by terms of the contracts or by virtue of the assertion of regulatory authority.

> "If in this situation local law provides a standard for determining which of two or more claimants would have been entitled to the benefits of the rate reduction, the federal court should apply it. If clear and speedy state remedies are available, the federal court might hold the fund until those having the final say on the state law questions have spoken" (336 U. S. at 583).

In stating the conditions under which the pipe line companies could participate in the fund, this Court was dealing with the sales of a pipe line subjejct to federal law and, therefore, with the status of the pipe line as a natural-gas company under the Natural Gas Act. In stating that the Court below should "look beyond those companies for the rightful claimants of the fund" it was speaking of "those companies" as natural-gas companies under federal law. Consequently, the instruction of this Court was followed by the Court below when it looked beyond Mississippi as a federal natural-gas company to the status of Mississippi as a direct seller of gas under state law. Applying the local law the Court found that it could render no other judgment than to award to Mississippi the impounded funds in question (R. 139-140).

I.

The decision below is clearly correct and conforms to this Court's mandate.

This Court, when the general refund matter of Interstate was before it (336 U. S. 577), was concerned primarily with the part of the fund accumulated from excess charges for gas which found its way to resale channels. In respect thereof, this Court held federal law (i.e., the Natural Gas Act) to be determinable of a natural-gas company's right to keep this part of the fund. In consideration of the dual

role of a natural-gas company like Mississippi, the general principles pointed out in the introduction to the argument are to apply.

In effect, the Court below had only one problem, i.e., what to do with the excess payments for gas not sold for resale but consumed by the immediate purchaser. As to those sales which Mississippi made for resale there was no problem. Mississippi had passed on this entire amount. It had then "done all that was in their power to effectuate the policy of the Act in this regard" (336 U. S. at 582).

As to the one problem before it, the Court below had been admonished by this Court to reconstruct the situation and undo, to the extent judicially possible, the effect of granting the stay to Interstate, i.e., application of equitable principles. In so doing, the Court had to inquire "whether the reductions would have reached the industrial users either by terms of the contracts or by virtue of the assertion of regulatory authority" (336 U. S. at 583).

In the reconstruction process the Court below determined that the contracts did not give any direct industrial consumer a refund right; nor did local regulatory authority give any such right—at least during any time material here. We do not understand petitioner to object to these determinations. In fact, it was admitted in the Court below that the contracts which Mississippi has with its industrial users of gas contained no provisions for price relief or reduction (R. 133-134). As to the second position, it already has been pointed out that the determination of the petitioner had been that it had no jurisdiction over Mississippi's direct industrial sales for consumptive use. Even if it had, it would now be unable to recoup for any consumer the amount of excess charges if they, in fact, existed (Ill. Rev. Stat., 1949, Ch. 111⅔, §76, reprinted at page 17 of petition).

The nub of petitioner's attack upon the decision below rests upon an assertion that the Court had determined when

this case was here on the general question of refunds that a natural-gas company purchaser from Interstate was not entitled to any of the excess charges unless it had been earning less than a fair rate of return. We leave it to this Court to determine exactly what it held, but it is obvious to us that no such holding can be gleaned from the opinion of the Court or from any opinion previously filed. Where this Court speaks of making inquiry beyond, for example, Mississippi, it is speaking in terms of the policy of the Natural Gas Act (336 U. S. 577, 582) which, of course, as the petitioner recognizes (petition, p. 5, fn. 3) is limited so far as sales are concerned to sales for resale only. Not by any stretch of the imagination does the policy of the Act in respect of sales apply to sales for consumptive use (*Panhandle Eastern Pipe Line Company* v. *Public Service Commission of Indiana,* 332 U. S. 507).

Petitioner here, also, speaks of Mississippi's rates being too high during the accumulation of this fund as demonstrated by the Federal Power Commission's order against Mississippi and that the Federal Power Commission had determined that Mississippi was earning more than a fair rate of return on all its business. Actually, the Federal Power Commission assumed to do no such thing, but determined only that 6% "is the maximum rate of return which can be called fair for Mississippi to earn from its regulated sales to the utility customers" (4 F. P. C. 340 at 351).[1] The Federal Power Commission in this case in speaking of the direct sales for consumptive use notes that:

[1] The Power Commission adjusted actual expenses downward and used speculative future expectations in business as the reason for not using expenses as actually incurred. The full text of the Commission's Order and Opinion indicates that 1943 was used as a test year for sales volumes and gross revenues alone and the Commission did not make any conclusions as to the actual 1943 rate situation; nor did the Commission go beyond the year 1943 in any determination made by it as to actual earnings (see 4 F. P. C. 340, 346-351, 360).

> "This is a matter primarily of contracts between Mississippi and such industrial purchasers, unless state regulatory authorities have jurisdiction and authority to determine and fix the rates and charges which are to apply to such sales of gas" (R. 99).

It is in the second part of the Court's opinion in the previous review (336 U. S. 583 *et seq.*) that the Court deals with the question of the two uses of gas or the dual role of a natural-gas company claimant. In that second part the Court clearly recognizes that the amount of reduction in rates could reach industrial users only because of contract or because of the state or local regulatory authority.

Apparently recognizing the inherent weakness in its argument, petitioner suggests that it would not be equitable for the Court below to reconstruct the situation that would have pertained had no stay order been granted (petition, p. 9). Of course, it is the application of equitable principles which compels the reconstruction of the situation as though no stay had been granted. This Court previously held that while no one can know for a certainty what would have happened had no stay been entered, the Court below "must make its prognostication, whether an excursion into federal or state law questions is entailed" (336 U. S. 584). This is exactly what the Court below did. Having had removed any consideration of the problem of sales for resale which was the only sphere for the application of federal law, it went into the only questions remaining. It determined after admission that no contractual provisions gave any legal or equitable right to the industrial claimants. The Court then inquired into the Illinois law "relying on such sources of local law as may be available, including information from state regulatory agencies". The Court was informed as to the Illinois law as it had been expounded by

the state regulatory agency having to execute such law. Only after this "excursion" into state law questions did the Court determine that the state law was such that Illinois would not have awarded any direct industrial user of gas the amount of excess charges paid by Mississippi to Interstate (R. 140).

To shore up this specious contention petitioner tacitly asserts as a fact a present affiliation between Interstate and Mississippi (petition, pp. 9-10). This affiliation no longer exists and has not existed during any of the time in which this refund controversy has been going on. Petitioner was more cautious of the truth when in a previous part of its brief it advisedly asserted affiliation only during the time the fund was accumulated in the Court below during the Interstate review proceeding (petition, p. 3).

Petitioner asserts as a more equitable plan the distribution of excess charges paid for gas sold for consumption to utility distributing companies which resold the gas. It cites cases in which this procedure allegedly had been followed. The situation in all of the cases cited in petitioner's brief in this respect involved instances where the gas was not used by the immediate purchaser from the pipe line company, but was in fact resold in part to industrial users. As pointed out by the Federal Power Commission, the situation in these instances is not parallel with that obtaining here (R. 99-102). Petitioner finally concludes that in order to do equity the exact parallels of the situations involved in other cases should not control but that the comparative earnings and conditions of the intermediate companies must be examined. It is difficult to comprehend why this is so since we are dealing here only with a product sold on a purely competitive basis and outside of the ambit of control of the Federal Power Commission and outside of the statu-

tory control of petitioner. In effect, petitioner is requesting a strictly controlled economy in the operations of a company over a portion of its business as yet unregulated. The rates charged to the direct industrial consumers of Mississippi are "the fruit of private and arms-length negotiations under the compelling pressures of other competing fuels" (R. 138).

As further error, petitioner asserts that the Court below should not have relied upon an order of the Illinois Commerce Commission dated January 14, 1949 (R. 28-36) from which the Court concluded that no relief to the direct industrial consumers was afforded under the Illinois law. The answer to this is that the Court below made use of "such sources of local law as may be available, including information from state regulatory agencies" (336 U. S. at 584).

The final plaint of petitioner in its argument that the Court below failed to follow the mandate of this Court is that the decision below puts a premium on litigation of rate orders. Suffice it to say, neither Interstate nor any affiliate of Interstate will realize one cent of benefit from the distribution of the funds as made by the Court below. In fact, the distribution ordered by the Court below gives exact and accurate attention to the policy of the Natural Gas Act and to the contractual and state legislative situation existing at the time. The Court has applied the equitable rule of restitution (see *Atlantic Coast Line R. R. Co.* v. *Florida,* 295 U. S. 301) by reconstructing the situation as though no stay had been granted. Thus, excess charges paid by Mississippi for gas which it resold have been passed on to utility distribution companies for distribution as their respective state agencies may direct. In fact, the distribution of the money to Mississippi's resale customers and thence to remote domestic and industrial consumers by Mis-

sissippi's consent goes beyond what Mississippi would have had to have given up if no stay had ever been granted.[2] Had no stay ever been granted, Mississippi under the state of the law would never have been required to reduce any price at which it sold gas for direct consumption. Therefore, the reconstruction process requires the return of this total fund to it.

II.

There is no question involved in this petition relating to a question of federal law and the Natural Gas Act which has not already been determined by this Court.

Petitioner asserts that the questions involved should be settled and the rights of ultimate consumers in the impounded funds should be determined. Of course, these were the questions which concerned this Court in the previous refund appeal (336 U. S. 577). Apparently, the only conflict existing here is the one between petitioner's notions and the holdings of this Court previously made. The attempt upon the part of the petitioner to torture the opinion and judgment of the Court below into an apparent conflict with the conclusions of this Court exposes nothing of inconsistency of action by the Court below but does expose

---

[2] The sum of $300,898.66 represents excess charges paid by Mississippi to Interstate for gas which Mississippi subsequently sold for resale during the period June 1, 1943 to January 20, 1946. January 20, 1946 was the date the Federal Power Commission rate reduction order against Mississippi was effective. Since the Power Commission has no reparation authority *(Federal Power Commission* v. *Hope Natural Gas Company,* 320 U. S. 591, 618), had no stay been entered in this case, Mississippi would have been entitled to keep this sum. It agreed, however, to pass it on to ultimate resale consumers. The sum of $244,103.70 had previously been passed on by means of reduced rates for an interim period as indicated above in the Statement (p. 3, *supra*).

a tendency on the part of the petitioner to ignore what this court has already stated and what the Court below actually did. The only question remaining in the Court below was whether Mississippi or its immediate consumptive users should receive an allocable portion of the impounded funds. All questions are of importance to litigants but the Court below, upon the basis of this Court's opinion which became the law of the case, arrived at a decision not only consistent therewith but in complete conformity therewith. Since all questions of disposition of the fund as it related to sales made by Mississippi *for resale* were resolved by agreement in favor of ultimate consumers of gas, there remained only the question of activity in the sphere where state regulatory authority is still exclusive. In relation to this state sphere, the Court noted and found upon the best basis obtainable that no Illinois immediate consumer of gas would have received a portion of the impounded funds since Illinois did not and has not yet to this date asserted any rate regulatory authority over Mississippi. The Court below also held the same as to the Missouri law. The question of contractual right to refunds has been conceded against the claim of the petitioner in all instances. Not only was the Court below acting consistently with the law of this case as previously prescribed by this Court, but also was acting consistently with *Central States Electric Co.* v. *City of Muscatine, et al.,* 324 U. S. 138, as construed by this Court under the law of this case. In effect, all that was left to the Court below was a determination of disposition of the fund under either contract or state regulatory law. The conclusions reached were clearly correct and authoritatively supportable.

How any further consideration of this controversy which has already been before this Court can serve to reduce rate litigation or discourage affiliation between gas pipe line

companies is indeed difficult to imagine. The specious attempt of petitioner to cast an aura of importance upon this case would require the assumption that all business activities of natural-gas companies are carried on for the purpose of fostering rate controversies of long duration.

This Court has spoken upon every principle urged by petitioner. In effect, petitioner is asking the Court to re-examine its own conclusions and to overrule the law of this case.

Conclusion.

For the reasons stated herein, the Petition for Certiorari should be denied.

Respectfully submitted,

WILLIAM A. DOUGHERTY,
JAMES LAWRENCE WHITE,
HENRY F. LIPPITT, II,
Attorneys for Respondent,
MISSISSIPPI RIVER FUEL CORPORATION.

FILED
NOV 9 1950
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 360

ILLINOIS COMMERCE COMMISSION,
Petitioner,

v.

MISSISSIPPI RIVER FUEL CORPORATION, *et al.*,
Respondents.

STATEMENT OF RESPONDENTS GENERAL STEEL CASTINGS CORPORATION, GRANITE CITY STEEL COMPANY, LACLEDE STEEL COMPANY AND OWENS-ILLINOIS GLASS COMPANY

FRED E. FULLER
LESLIE HENRY
Ohio Bldg., Toledo, Ohio
Counsel for Respondents

WILLIAM R. BASCOM
MILTON H. TUCKER
CHARLES S. GLAZER
St. Louis, Missouri
WESLEY LUEDERS
Granite City, Illinois
Of Counsel

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

ILLINOIS COMMERCE COMMISSION, *Petitioner,* v. MISSISSIPPI RIVER FUEL CORPORATION, *et al.*, *Respondents.*	No. 360

STATEMENT OF RESPONDENTS GENERAL STEEL CASTINGS CORPORATION, GRANITE CITY STEEL COMPANY, LACLEDE STEEL COMPANY AND OWENS-ILLINOIS GLASS COMPANY

These respondents, direct industrial customers of Mississippi River Fuel Corporation and petitioners in No. 356, agree that the judgment of the Court of Appeals should be reviewed, for the reasons stated in their petition for writ of certiorari. Respondents disagree with certain of the arguments made in the petition of Illinois Commerce Commission, but reserve discussion thereof until the petitions for writs of certiorari are granted.

FRED E. FULLER
LESLIE HENRY
Counsel for Respondents General Steel Castings Corporation, Granite City Steel Company, Laclede Steel Company, and Owens-Illinois Glass Company

WILLIAM R. BASCOM
MILTON H. TUCKER
CHARLES S. GLAZER
WESLEY LUEDERS
Of Counsel